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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

No. CR 13-0667 WHA

12 v.

13 CLEOPHAS KIRKSEY,

14 Defendant.  
15 \_\_\_\_\_/

**ORDER GRANTING MOTION  
TO DISMISS MOTION UNDER  
28 U.S.C. 2255**

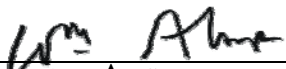
16 Defendant Cleophas Kirksey alleged in his motion to vacate that his sentence was  
17 improperly enhanced using a prior conviction that would not qualify as a “crime of violence”  
18 under the residual clause in U.S.S.G. 4B1.2(a)(2) after *Johnson v. United States*, 576 U.S. \_\_\_,  
19 135 S.Ct. 2551 (2015), which ruled the same language void for vagueness in the Armed Career  
20 Criminals Act. In *Beckles v. United States*, 580 U.S. \_\_\_, 137 S.Ct. 886 (2017), the Supreme  
21 Court ruled that the Sentencing Guidelines are not subject to a vagueness challenge under the  
22 Due Process Clause.

23 The government now moves to dismiss defendant’s motion to vacate his sentence  
24 inasmuch as his theory is now foreclosed by the holding of *Beckles*. Kirksey acknowledges the  
25 holding of *Beckles* and takes no position on the substance of the government’s motion.  
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1 This order agrees that *Beckles* forecloses defendant's effort to extend the holding of  
2 *Johnson* to the Sentencing Guidelines. Accordingly, the government's motion to dismiss is  
3 **GRANTED**, and defendant's motion to vacate his sentence is **DENIED**.

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5 **IT IS SO ORDERED.**

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7 Dated: May 18, 2017.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE